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# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-219470

DATE: November 8, 1985

MATTER OF: Edward R. Smith - Retroactive Temporary  
Promotion and Backpay - Overlong Detail

## DIGEST:

An employee who claims entitlement to a retroactive temporary promotion and backpay based on our Turner-Caldwell decisions, appeals a disallowance by our Claims Group. That disallowance was based on our decision Turner-Caldwell III, 61 Comp. Gen. 408 (1982), which followed the Court of Claims decision in Wilson v. United States, 229 Ct. Cl. 510 (1981), denying such entitlement, and stated that it would apply to all pending and future claims. The employee argues that, since our decision postdated the events on which his claim is based, it should not govern his entitlement. The disallowance is sustained. Since the employee's claim was not settled prior to our Turner-Caldwell III decision, that decision governs.

This decision is in response to correspondence from Mr. Edward R. Smith, who is appealing a settlement by our Claims Group, dated March 25, 1985. That settlement disallowed his claim for backpay during the period July 1, 1980, until November 27, 1981, incident to an overlong detail to a higher grade position. We sustain that disallowance for the following reasons.

## BACKGROUND

Mr. Edward R. Smith, was a grade GS-13 employee with the Farmers Home Administration, Department of Agriculture. Effective July 1, 1980, he was detailed to act as that activity's State Director for Colorado, for a period not to exceed 120 days. We understand that the position to which he was detailed was officially classified as grade GS-15. Through a series of subsequent actions, Mr. Smith was retained on detail in that position until November 27, 1981. At that time, a new State Director was appointed and Mr. Smith was returned to prior grade GS-13 duties.

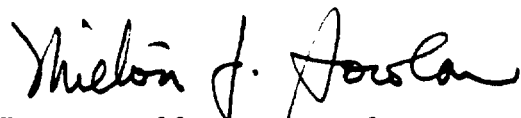
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under the Back Pay Act, 5 U.S.C. § 5596. In our decision Turner-Caldwell III, above, we ruled that we would follow the Wilson decision and that, while we would not disturb settlements already made by our Office or other Federal agencies pursuant to our prior Turner-Caldwell decisions, we would no longer follow those decisions in any claim currently pending in this Office or received here in the future.

Mr. Smith expresses concern that his claim has been denied based on a changed interpretation of the law which occurred after the events that gave rise to his claim. While we understand this concern, we cannot accept it as a basis for changing our approach.

Once we decided in Turner-Caldwell III to follow the Wilson decision, there was no longer any legal basis to grant claims such as Mr. Smith's. Thus, we stated in Turner-Caldwell III, 61 Comp. Gen. at 410, that no such claims would be allowed after the date of that decision, and we have consistently followed this approach. It is true that our Turner-Caldwell III decision declined to reopen prior actions by our Office as well as other Federal agencies which had granted claims based on overlong details, but this was done in accordance with our usual practice to assure stability in the claims settlement process. See, e.g., 56 Comp. Gen. 561, 565-66 (1977); 54 Comp. Gen. 890, 892 (1975). However, it does not validate those claims that arose prior to the Turner-Caldwell III decision but were not settled prior thereto. See 58 Comp. Gen. 345, 346 (1979).

Accordingly, since Mr. Smith's backpay claim was not settled and approved before the date of our Turner-Caldwell III decision, there is no legal basis upon which we can authorize payment.



Acting Comptroller General  
of the United States

Thereafter, Mr. Smith made a claim to his agency for backpay, beginning with the 121st day of his detail based on OPM regulations. The agency disallowed the claim by memorandum dated September 26, 1983. The basis for that disallowance was our decision, Turner-Caldwell III, 61 Comp. Gen. 408 (1982). Mr. Smith appealed that ruling to this Office. By settlement dated March 25, 1985, our Claims Group also disallowed the claim, reiterating the agency's basis for disallowance and adding a reference to the case of A. Leon Wilson v. United States, 229 Ct. Cl. 510 (1981), as being the reason for our decision in Turner-Caldwell III, above.

Mr. Smith now contends that our decision in Turner-Caldwell III, above, should not control his entitlement. It is his view that, since the decision involved a change in our interpretation of the law and postdated the period of his claim, it should only apply to claims which arise after the date it was rendered.

#### ANALYSIS

The basis upon which Mr. Smith made a claim to his agency for backpay, in the first instance, was our Turner-Caldwell decisions, 55 Comp Gen. 539 (1975), sustained in 56 Comp. Gen. 427 (1977). Those decisions, which represented a departure from prior decisions of this Office, ruled that employees who were detailed to higher grade positions for more than 120 days without prior approval of the Civil Service Commission--now the Office of Personnel Management--were entitled to temporary promotions and backpay beginning on the 121st day of the detail. Based on those rulings, the then Civil Service Commission issued FPM Bulletin No. 300-40, dated May 25, 1977.

On October 23, 1981, the United States Court of Claims rendered a decision in the Wilson case, above. In Wilson, the Court specifically declined to follow our Turner-Caldwell decisions. In so ruling, the Court stated that neither the applicable statute (5 U.S.C. § 3341), nor the provisions in the Federal Personnel Manual implementing that statutory provision, authorized either a constructive promotion or pay of the position to which detailed when the detail exceeds the permissible 120-day duration. The Court likewise concluded that no entitlement existed